

**Introduced by Senator Hernandez**February 20, 2014

---

---

An act to add Sections 1262.9 and 1371.9 to the Health and Safety Code, and to add Section 10112.8 to the Insurance Code, relating to health care.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1238, as introduced, Hernandez. Health care: observation care.

Existing law, the Knox–Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law provides for the regulation of health insurers by the Insurance Commissioner. Existing law also provides for the licensure and regulation of health facilities by the State Department of Public Health and makes a violation of those provisions a misdemeanor. Existing law requires a health care service plan to provide 24-hour access for enrollees and providers to obtain timely authorization for medically necessary care for circumstances where the enrollee is in need of poststabilization care. Existing law requires a hospital that does not contract with a health care service plan and treats an enrollee of that plan for an emergency medical condition to take specified steps before providing poststabilization care to the enrollee.

This bill would require a hospital to assess a patient for inpatient admission after the patient has been receiving observation care at the hospital for 24 hours and would require the hospital to contact the patient's health care service plan or health insurer to request authorization for that admission if necessary. The bill would require a plan or insurer that denies this request for authorization to find an alternative placement for the patient. If the patient has been receiving

observation care for 48 hours and the plan or insurer has not arranged for that alternative placement, if applicable, the bill would deem inpatient admission of the patient to be medically necessary and would create a rebuttable presumption that the plan or insurer shall pay for covered services provided by the hospital thereafter at the applicable inpatient rates. Because a violation of these requirements by a hospital or health care service plan would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature hereby finds and declares all of
- 2 the following:
- 3 (a) There is an increasing utilization of observation stays by
- 4 the health care delivery system, often leaving patients in a state of
- 5 limbo in which they are neither admitted to a hospital nor
- 6 discharged into a more appropriate level of care.
- 7 (b) These observation stays should be limited to patients who
- 8 truly meet the criteria for observation and should only be used for
- 9 48-hour periods.
- 10 (c) A patient held in an observation stay for longer than 48 hours
- 11 should be admitted to the hospital where his or her presence can
- 12 be calculated into the nurse-staffing ratio and where he or she can
- 13 receive the full range of services of an acute care facility.
- 14 (d) A patient who is not admitted to the hospital should be
- 15 admitted to a skilled nursing facility or should have care provided
- 16 by in-home supportive services, if he or she does not have someone
- 17 who can monitor his or her health status at home.
- 18 SEC. 2. Section 1262.9 is added to the Health and Safety Code,
- 19 to read:
- 20 1262.9. (a) When a patient has been receiving observation
- 21 care at a hospital for 24 hours, the hospital shall assess the patient
- 22 for medical necessity for inpatient admission and, if necessary,

1 shall request authorization for inpatient admission by the patient’s  
2 health care service plan or health insurer.

3 (b) When a patient has been receiving observation care at a  
4 hospital for 48 hours, one of the following shall apply:

5 (1) If the patient is not covered by a health insurer or health care  
6 service plan, inpatient admission of the patient to the hospital shall  
7 be deemed medically necessary.

8 (2) If the patient is covered by a health care service plan or  
9 health insurer, subdivision (b) of Section 1371.9 or subdivision  
10 (b) of Section 10112.8 of the Insurance Code shall apply.

11 (c) For purposes of this section, the following definitions apply:

12 (1) “Health care service plan” means a health care service plan  
13 licensed pursuant to Chapter 2.2 (commencing with Section 1340)  
14 of Division 2 that covers hospital, medical, or surgical expenses.

15 (2) “Health insurer” means an insurer that issues policies of  
16 health insurance, as defined in Section 106 of the Insurance Code,  
17 regulated by the Insurance Commissioner.

18 (3) “Hospital” means a general acute care hospital, as defined  
19 in subdivision (a) of Section 1250, or an acute psychiatric hospital,  
20 as defined in subdivision (b) of Section 1250.

21 SEC. 3. Section 1371.9 is added to the Health and Safety Code,  
22 to read:

23 1371.9. (a) If a health care service plan denies a request for  
24 authorization for inpatient admission of an enrollee under Section  
25 1262.9, the plan shall find alternative placement for the enrollee,  
26 including, but not limited to, home health care, in-home supportive  
27 services, or a skilled nursing facility, or arrange for the enrollee’s  
28 transfer to another hospital.

29 (b) When an enrollee has been receiving covered observation  
30 care at a hospital for 48 hours, and the plan has not arranged for  
31 alternative placement or transfer of the enrollee under subdivision  
32 (a), inpatient admission of the enrollee to the hospital shall be  
33 deemed medically necessary and the rebuttable presumption shall  
34 be that the plan shall pay for covered care provided by the hospital  
35 to the enrollee following those 48 hours at the inpatient rates  
36 applicable under the enrollee’s plan contract.

37 (c) For purposes of this section, “hospital” means a general  
38 acute care hospital, as defined in subdivision (a) of Section 1250,  
39 or an acute psychiatric hospital, as defined in subdivision (b) of  
40 Section 1250.

1 SEC. 4. Section 10112.8 is added to the Insurance Code, to  
2 read:

3 10112.8. (a) If a health insurer denies a request for  
4 authorization for inpatient admission of an insured under Section  
5 1262.9 of the Health and Safety Code, the insurer shall find  
6 alternative placement for the insured, including, but not limited  
7 to, home health care, in-home supportive services, or a skilled  
8 nursing facility, or arrange for the insured’s transfer to another  
9 hospital.

10 (b) When an insured under a policy of health insurance has been  
11 receiving covered observation care at a hospital for 48 hours, and  
12 the insurer has not arranged for alternative placement or transfer  
13 of the insured under subdivision (a), inpatient admission of the  
14 insured to the hospital shall be deemed medically necessary and  
15 the rebuttable presumption shall be that the insurer shall pay for  
16 covered care provided by the hospital to the insured following  
17 those 48 hours at the inpatient rates applicable under the insured’s  
18 policy.

19 (c) For purposes of this section, “hospital” means a general  
20 acute care hospital, as defined in subdivision (a) of Section 1250  
21 of the Health and Safety Code, or an acute psychiatric hospital, as  
22 defined in subdivision (b) of Section 1250 of the Health and Safety  
23 Code.

24 SEC. 5. No reimbursement is required by this act pursuant to  
25 Section 6 of Article XIII B of the California Constitution because  
26 the only costs that may be incurred by a local agency or school  
27 district will be incurred because this act creates a new crime or  
28 infraction, eliminates a crime or infraction, or changes the penalty  
29 for a crime or infraction, within the meaning of Section 17556 of  
30 the Government Code, or changes the definition of a crime within  
31 the meaning of Section 6 of Article XIII B of the California  
32 Constitution.

O